

U.S. CUSTOMS AND BORDER PROTECTION

We Build the Wall

November 19, 2019

Overview

- We Build the Wall (WBTW), a private entity, continues to communicate with U.S. Customs and Border Protection (CBP) and the U.S. Border Patrol (USBP) in their efforts to construct border wall.
- To date, WBTW has raised approximately \$23 million, and has constructed approximately 0.5 miles of border wall in Sunland Park, New Mexico. WBTW has expressed an interest in donating this section of border wall to CBP. However, at this time, no such donation has been attempted or accepted by CBP. Fisher Industries served as WBTW's construction contractor on the project.
- WBTW has expressed interest in constructing additional border wall in Anapra, New Mexico, Laredo (El Cenizo), Texas and Tecate, California.
- In early November, CBP learned that WBTW is attempting to construct border wall in the Rio Grande Valley, with Fisher Industries again the construction contractor.
 - A private landowner (Neuhaus) has provided access to WBTW.
 - Construction appears to be in the Rio Grande River Flood Plain, and the U.S. International Boundary and Water Commission (IBWC) has not been consulted or approved this construction.
 - IBWC has reached out to the Department of Justice (DOJ) requesting the issuance of a cease and desist order in the event that WBTW begins construction as IBWC is concerned the construction design and location will cause deflection of water, thereby violating the 1970 Treaty with Mexico.
 - The U.S. Army Corps of Engineers (USACE) has also not been consulted, however, USACE is working with their legal and regulatory teams to see if USACE has any recourse should construction commence.
 - Construction here would be redundant due to the current construction of the FY18 RGV-03 levee wall system construction. It would also likely impact the validity of the hydrology model completed as part of the RGV-03 design that was approved by IBWC before construction start.

Background – Sunland Park, New Mexico Construction

- WBTW completed their project in Sunland Park, New Mexico in early June 2019.
- They want to “donate” the project to DHS/CBP; however, there are some changes to the

the hydrology model completed as part of the 2017 design that was approved by IBWC before construction start.

Background – Sunland Park, New Mexico Construction

- WBTW completed their project in Sunland Park, New Mexico in early June 2019.
- They want to “donate” the project to DHS/CBP; however, there are some changes to the project that need to be conducted before CBP accepts this donation.
- CBP has developed a checklist for future border barrier donations.
- Performance during the execution period was not consistent with Fisher Industries claims. This is not to say they cannot perform, but stakeholder interest has been driven largely by Fisher Industries claims that they can do this work better/faster/cheaper. Their performance

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on this small project shows that some claims may have been inflated due to lack of experience with this type of work. For example:

- Claim: Panel emplacement for 2,200 feet will take of 3 to 4 working days.
 - Actual: Panel installation took 8+ days working 24 hours per day.
- Claim: Each excavator will place 8 panels with 18' bollards.
 - Actual: 5 panels per excavator were placed. As predicted by CBP Program Management staff, the steeper slope restricted productivity.
- In September 2019, CBP Leadership met with representatives of WBTW in an overall positive meet and greet to discuss the completed wall section in Sunland Park, New Mexico. USBP representatives outlined the results of the operational assessment that was conducted on the project and identified some areas of concern and other approaches USBP takes when undertaking similar projects. WBTW representatives asked for clarification on what a donation offer would need to look like and whether CBP would be amenable to acceptance if an offer were made. Deputy Commissioner Perez expressed that CBP is interested in exploring all available options if an offer were made. WBTW was provided with CBP's Barrier Donation Checklist.

Operational Challenges to Acceptance

- The barrier is not on the border. Wherever possible, CBP replaces the barrier within three

- The barrier is not on the border. Wherever possible, CBP emplaces the barrier within three feet of the international boundary to ensure a physical impediment is encountered before meaningful entry can be made. Work was clearly completed on the south side, from the south side. Such work could not be accomplished if CBP's alignment requirements were met.
- The barrier was constructed to 18 feet in height. While an alternatives analysis for this area has not yet been conducted, given the urban environment, it is likely that the requirement in this area would be for 30 feet in height.
- LGDS cable is south of the barrier, rather than north as required by CBP's design standard, which puts it at higher risk of vandalism and makes it more difficult to repair. It is unknown at this time if the actual cable meets USBP requirements for detection capability nor if it can be connected to other cables as Rio Grande River separates this section from other segments in El Paso.
- No drainage/hydrology studies were performed. As a private project, more than 60 feet north of the border, this may or may not have been required, but when it becomes a federal asset, the potential negative impact could result in flooding or other damage. A sliding vehicle gate was installed for the IBWC access south of the barrier. According to media reports, IBWC has forced open the gate and locked it open. USBP has not been able to confirm the gate meets the current standards.
- The type of cameras installed is unknown. However, WBTW has indicated an intention to provide real-time access to four cameras to donors to their program. Security of cameras, data storage, data type, image format and transmission all remain unknown.
- Lack of access to south. USBP would need to acquire non-federal land to connect any future barrier to this barrier, at a cost to the government.
- There is significant amount of collateral work area that was used to complete this work. The construction approach appears to require an over 200 foot work area, significantly greater than the 55 foot USBP typically uses, making translating this construction approach to other areas challenging and in some locations, impossible.
- Were CBP to consider assuming/accepting this work from WBTW all of the legal concerns discussed herein would have to be addressed and:

- As-built drawings must be received and reviewed to ensure construction meets current design standards.
- Material certification/site tests must be reviewed to ensure the materials used meet standards.
- Construction progress photographs would need to be reviewed to confirm depth of foundation, proper reinforcing layout and embedment criteria met.
- USBP would need to determine if the location and height of this barrier actually meets the operational requirements for this area.
- USBP will need to ensure compliance with DHS gift acceptance authorities and policies.
- USBP will need to ensure property real estate interests have been acquired.

Anapra WBTW Construction Challenges

- Based on data from the Dona Ana Tax Assessors office the Roosevelt Reservation runs from Anapra to the east and stops at the larger Catholic Diocese property.
- There does not appear to be Roosevelt Reservation from the larger parcel owned by the Catholic Diocese eastward to the American Eagle Brick Co. property. However, this would need to be confirmed with USACE.
- There are no current access roads to the border from Anapra to the American Eagle Brick Co. property.
- CBP has not conducted any environmental surveys east of Anapra to the Texas border.
- The Catholic Diocese property contains the historical Christ statue atop Mount Cristo Rey.
- The area between Anapra and the property owned by the American Eagle Brick Co. property would require environmental planning under the National Environmental Policy Act (NEPA) to include cultural and biological surveys, consultation under Section 106 of the National Historic Preservation Act with the New Mexico State Historic Preservation Office (SHPO) and Native American Tribes, and the completion of an Environmental Assessment.
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- If DHS/CBP were to engage in a NEPA analysis of the proposed construction, due to the cultural sensitivity of the Mount Cristo Rey site and likely controversy, the project would likely require a full Environmental Impact Statement, as opposed to an Environmental Assessment, which is more streamlined NEPA review.
- The area between Anapra and the American Eagle Brick Co. property is mountainous terrain which may require blasting and significant earth work in order to construct roads and barrier.

Issues Likely to be Raised

Q1: Why does CBP insist on using the U.S. Army Corps of Engineers and not do its own acquisition?

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A1:

- The USACE is CBP's preferred partner in executing border barriers for various reasons.
- The USACE provides acquisition, construction oversight, and real estate expertise.
- The USACE has experienced personnel to support and accomplish the complex acquisition and contract administration required for large-scale construction through competitively bid contracts.
- Additionally, the USACE is one of a few agencies with delegated authority to approve title, which is critical to our acquisition of real estate.
- Lastly, the USACE has experience and subject matter expertise to rapidly execute construction projects of this magnitude.
- As the USACE competitively bids border wall projects on behalf of CBP, we encourage all companies that are interested in constructing border wall to bid on opportunities solicited by the USACE.
- **However, as USACE is now executing their own funded projects as well as DHS funded projects, CBP is currently exploring self-execution for construction of some smaller projects. Opportunities may be available for companies to competitively bid on CBP projects. USACE will still be required to support where real estate acquisition is required.**

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